

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>CRYSTA L. SNOW</b>	)	
Claimant	)	
VS.	)	
	)	
<b>USD 261</b>	)	Docket No. 253,300
Respondent	)	
AND	)	
	)	
<b>KANSAS ASSOCIATION OF SCHOOL BOARDS</b>	)	
<b>SELF-INSURED FUND</b>	)	
Insurance Fund	)	

**ORDER**

Respondent and its insurance fund (respondent) appealed the February 11, 2005, Order entered by Administrative Law Judge Thomas Klein. The Board placed this post-award matter on its summary calendar for disposition without oral argument.

**ISSUES**

Claimant injured her left knee on September 19, 1996, working for respondent. Claimant initiated this workers compensation claim, which the parties settled on May 31, 2000. The terms of the settlement reserved claimant's right to seek additional medical treatment. And in an Order dated June 12, 2001, Administrative Law Judge John D. Clark named Dr. Bradley W. Bruner as claimant's authorized treating physician.

In December 2004, respondent filed a request to terminate Dr. Bruner's authority as the treating physician. Judge Klein conducted a hearing on February 10, 2005, and on February 11, 2005, issued an Order denying respondent's request.

Respondent contends Judge Klein erred. Respondent argues the medical treatment Dr. Bruner is providing claimant is not reasonable and necessary. Respondent argues:

Finally, after 20 surgeries, 4 aspirations, 29 injections, countless hours of physical therapy, and incalculable numbers of medications, it is obvious to even the most uneducated of persons that Dr. Bruner's treatments are not treating and/or relieving the effects of the injury at USD 261, but rather contributing.

To allow Dr. Bruner to continue to treat Claimant defies all logic. If Dr. Bruner continues to treat Claimant, one can only contemplate an endless number of additional surgeries. If the Board permits Dr. Bruner to continue to treat, then the Board should direct Dr. Bruner to install a zipper in Claimant's left knee so he can have easier access for the rest of his surgeries.<sup>1</sup>

In short, respondent requests the Board to reverse the February 11, 2005, Order. And to do otherwise would display ignorance and a complete lack of logic.

Conversely, claimant argues the February 11, 2005, Order is a preliminary hearing order issued under K.S.A. 44-534a. Accordingly, claimant contends the Board should dismiss this appeal as the Board does not have jurisdiction to review the February 11, 2005, Order. In the alternative, claimant argues the Order should be affirmed as (1) she is satisfied with Dr. Bruner's services, (2) the unusually high number of surgeries was caused due to unforeseen circumstances, including scar tissue and infection, (3) on four separate occasions respondent sought second opinions that confirmed claimant's need for surgery, (4) Dr. Kenneth A. Jansson's opinion that Dr. Bruner's services were not reasonable and necessary was fueled by personal animosity, and (5) Dr. Bruner's treatment has been reasonable and necessary.

The issue before the Board on this appeal is whether Judge Klein erred by denying respondent's request to terminate Dr. Bruner's services.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the parties' arguments, the Board finds and concludes the February 11, 2005, Order should be affirmed.

First, the Board has jurisdiction to entertain this appeal as this is a post-award request to modify the post-award June 12, 2001, Order that named Dr. Bradley W. Bruner as claimant's authorized treating physician. Consequently, the post-award medical statute, K.S.A. 2004 Supp. 44-510k, applies rather than the preliminary hearing statute, K.S.A. 44-534a. And K.S.A. 2004 Supp. 44-510k provides, in part:

A finding with regard to a disputed issue shall be subject to a full review by the board under subsection (b) of K.S.A. 44-551 and amendments thereto. Any action of the board pursuant to post-award orders shall be subject to review under K.S.A. 44-556 and amendments thereto.

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<sup>1</sup> Resp. Brief at 8 (filed Mar. 14, 2005).

Second, the evidence fails to establish that Dr. Bruner's ongoing treatment is other than reasonable and necessary. The record establishes there is a difference of opinion between Dr. Bruner and Dr. Jansson regarding whether claimant should have undergone past surgical procedures to remove scar tissue in claimant's left knee. Dr. Bruner explained in his medical report that excessive scar tissue formed due to an earlier infection. On the other hand, Dr. Jansson questions whether the infection has played any role in the formation of the scar tissue and believes claimant has undergone an inappropriate number of surgeries, which may have made matters worse.

Dr. Bruner commented that he was using electric cautery in an attempt to limit the amount of scar tissue in claimant's left knee. But Dr. Jansson questioned whether it was proper for Dr. Bruner to be using an electrocautery device. In short, the doctors disagree upon other issues as well. But even Dr. Jansson indicates that claimant may require additional surgery to release the lateral retinaculum.

Claimant testified she spent three and one-half hours in Dr. Jansson's office and waited while a nurse began reviewing volumes of claimant's medical records. According to claimant, Dr. Jansson used a portion of the 10 minutes he spent with claimant berating Dr. Bruner.

Q. (Mr. Farris) Can you briefly describe to us the examination that you had by Dr. Jansson?

A. (Claimant) For the three and a half hours I was there, he probably saw me for ten minutes total, his nurse came in with the stacks of files that you guys have and went through page by page, they hadn't even read any of the folders until we got there that day, and the nurse was reading them, surgery by surgery in front of Michael and I, and after completing two of the three folders that I had there at Advanced Orthopaedics, she stopped in the middle of the second folder and had enough of reading my history and then that's when she went and got Dr. Jansson and he came in, they didn't even continue on to the latest material that was -- medical records, they didn't even get through that, in front of us anyway.

Q. Can you describe to us the ten minutes you spent with Dr. Jansson?

A. He was pretty berating of Dr. Bruner, disagreed with the cauterization that he had been using on my knee for taking away the scar tissue, and I think Dr. Bruner addressed that in the letter, why he's using that, and basically it was just a let's look at the knee, took less than ten minutes, and gave his opinion.<sup>2</sup>

The record establishes there exists personal animosity between the doctors.

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<sup>2</sup> P.H. Trans. at 13, 14.

Despite respondent's present attacks upon Dr. Bruner, there is no indication in the record that respondent has requested utilization or peer review under K.S.A. 44-510j to determine whether Dr. Bruner has ordered unjustified treatment or services.

Respondent initiated this request to terminate Dr. Bruner's authority to treat claimant. Consequently, it is respondent's burden to establish that Dr. Bruner's ongoing care and treatment is other than necessary or reasonable. The Judge determined respondent had failed to satisfy its burden of proof. And the Board agrees.

The Board has given little weight to the medical records attached to the May 31, 2000, settlement hearing transcript as the opinions in those records do not address claimant's present condition or the necessity for medical treatment based upon that present status.

**WHEREFORE**, the Board affirms the February 11, 2005, Order entered by Judge Klein.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June, 2005.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: David H. Farris, Attorney for Claimant  
Anton C. Andersen, Attorney for Respondent and its Insurance Fund  
Thomas Klein, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director